

**Before the
Commission on Common Ownership Communities**

March 13, 1998

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| In the matter of | : | |
| Greenfield at Brandermill Condominium | : | |
| 11315 Appledowre Way | : | |
| Germantown, MD 20876 | : | |
| | : | |
| Complainant | : | |
| | : | |
| Vs. | : | Case No. 370-G |
| | : | |
| Feliks & Regina Lakomiec | : | |
| 34 Appledowre Ct. | : | |
| Germantown, MD 20876 | : | |
| | : | |
| Respondent | : | |

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and all arguments on the 29th day of October, 1997 pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, the Complainant and Respondent having presented their evidence, and the case file, and other documents produced by the parties have been entered into evidence, without objection as to the evidence admitted or the format of the hearing, the Panel makes the following findings of fact and conclusions of law and issues the following order:

STATEMENTS OF THE CASE

The Complainant is a condominium known as Greenfields at Brandermill Condominium Association, with its principal office located at 11315 Appledowre Way, Germantown, MD. The Respondents are Feliks and Regina Lakomiec who are owners of property which lies within the Condominium and who reside at 34 Appledowre Court, Germantown, MD. The complaint was filed claiming the failure of the Respondents to comply with the Association documents in failing to submit an application for approval prior to making improvements to their property. The Complainant alleges that Article XI, Section 1 of the Association Covenants of Declaration of the Condominium Bylaws require that any alteration of the common elements require the submission of an application to the architectural control committee (sometimes referred to as ACC). The Respondents argue that the trellis and landscaping work performed by them are not covered by the

documents of the association and do not require the submission of a request for approval to the architectural control committee. The Complainant condominium, in part of their presentation, presented evidence as to the decision of the condominium, on each of the items added or altered by the Lakomiecs, as if they had submitted an application to the architectural control committee to perform these landscaping changes.

BACKGROUND

1. Article XI "Architectural Control," Section 1, of the Association's documents provides that without approval of the association, it is prohibited for any unit owner "to install... or make any change or otherwise alter... by any manner whatsoever the exterior of any condominium unit or any of the common elements within the condominium...".

2. The condominium association has in the past allowed replacements of shrubbery and landscaping items which have failed to survive, without the necessity of submission of an application.

3. Article VII, Sections 2 (b) and (c) require that all of the general common elements and a portion of limited common elements shall be maintained by the corporation. The pertinent sentences include the following:

Section 2(c) Limited Common Elements.

The owner of a unit, at his own expense shall be responsible for the normal maintenance of the limited common elements..... However the corporation may, as a common expense, provide for lawn maintenance of the limited common elements....

Until decided otherwise by the Board of Directors, lawn maintenance of the limited common element area between the exterior of a building and the fence shall be the responsibility of the unit owner, lawn maintenance of the remainder of the limited element area shall be the responsibility of the corporation. The repair and replacement of the limited common element shall be the responsibility of the corporation."

4. The condominium failed to properly repair and replace portions of limited common elements which were damaged.

5. The Respondent attempted to assume some of the responsibility of the condominium for maintenance of the common elements, albeit without requesting approval for the actions of the respondent.

6. The association has a policy of allowing replacements of damaged items without

application to the architectural control committee.

7. The condominium association has acquiesced in the failure of the Lakomiecs to submit an application to the architectural control committee, has advised on the approval or disapproval of each of the actions of the Respondents and has requested that the Commission act on the items as if an application were submitted.

8. The Lakomiecs consent to such treatment but do not agree with the determinations made by the architectural control committee or the Condominium Association.

FINDINGS OF FACT

NOW, THEREFORE, the Commission finds the following facts, based upon the preponderance of the testimony and documents admitted into evidence, and after a full and fair consideration of the evidence of record that it will act upon the various elements of the Lakomiecs alterations without the necessity of submission of a formal request to the architectural control committee of the Condominium Association and orders that the following elements be treated as provided below:

1. The trees between number 34 Appledowre Ct. and 36 Appledowre Ct. were planted several years ago to replace damaged trees, and therefore are grandfathered in to the exception created by the Association. No architectural request is necessary and the shall remain in place.

2. The trellis does require a request to the ACC, which request was reasonably denied, and the trellis shall be removed completely as the ACC has denied the request appropriately.

3. The house number change does require a request to the ACC, which request was reasonably denied, and the new numbers will be removed from the door.

4. The rose bush in front of the address on the house must be trimmed and the height shall be maintained below the height of the house number as it appears on the house. This is reasonable in light of safety and identification purposes.

5. The section between the homes is either limited common or general common areas and, though requested by the ACC, no agreement from the homeowner of 36 Appledowre Ct., concerning maintenance of the middle section need be obtained.

6. The changes in the area between number 34 and number 36 does require a request to the ACC, which request was approved subject to a reasonable condition of agreement on maintenance. The Lakomiecs shall submit an agreement whereby they agree to maintain the area between number 34 and number 36 or the Lakomiecs will need to return the area to a lawn condition.

7. All vines and rosebushes on the outside of the fence does require a request to the ACC, which request was approved with a reasonable condition, and they must be moved away from the fence or moved inside the fence so that they cannot attach themselves to the fence to allow for painting and maintenance of the fence by the Association.

8. All flower pots resting on the fence do require a request to the ACC, which request was reasonably denied for safety and esthetic reasons, and the flower pots must be removed to an area inside the fence and on the ground.

9. The flowers in front to the fence do require a request to the ACC, which request was approved with a reasonable condition. The Lakomiecs shall be responsible for maintaining the flowers in front of the fence and shall agree to such maintenance in the letter described in number 6 above.

10. The planting of the rhododendron bush near the front door of number 34 does require a request to the ACC, which request was approved with a reasonable condition. The rhododendron bush shall be maintained by the Lakomiecs in a well-kept manner.

11. The external thermometer connections outside the windows of the Lakomiec residence may remain in their location as they do not constitute an architectural change as required under the documents in order to come under the control of the ACC.

12. The hose rack which is located on the front of the Lakomiec's property does not constitute an architectural change as required under the documents to be under the control of the ACC and, therefore, it may remain at its location.

13. No further application by the Lakomiecs is necessary for the alterations in existence at the time of the hearing, as these have been reviewed. Any additional architectural changes as required under the documents to be under the control of the ACC, will require further application by the Lakomiecs.

ORDER

In view of foregoing and based on the evidence of record it is hereby ordered that :

1. Within thirty (30) days from the date of this order, the Respondent shall submit a letter to the Association agreeing to maintain the area between 34 and 36 Appledowre Ct. and agreeing to maintain the flowers in front of the fence located at number 34 Appledowre Ct. as provided in paragraphs 5 and 9 of the findings.


2. The Respondent Lakomiecs shall comply with all of the directions outlined in the

conclusions above within thirty (30) days from the date of this order.

3. Time is of the essence with respect to time frame stated in this Order.

The foregoing was concurred in by panel members, Axelson, Burstyn, and Huson.

Any party aggrieved by the action of the Commission may file and administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Jeffrey M. Axelson, Panel Chair
Commission on Common Ownership
Communities